IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

Civil Revision No.131 of 1984

Date of Decision: 22.11.2006

Food Corporation of India

Petitioner

versus

M/s Swastik Enterprises

Respondent

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

Present: Shri Rajesh Garg, Advocate for the petitioner

Jasbir Singh, J. (Oral)

This order will dispose of four Civil Revisions bearing Nos. 2882 and 2883 of 1981 and 131 and 132 of 1984. The main question for determination, in all these revision petitions, is as to whether after issuance of no demand certificate by the respondent contractor, he is still entitled to get the matter referred to an Arbitrator, as per terms and conditions of the contract agreement. For the purpose of writing order, facts are being taken from Civil Revision No.131 of 1984.

Record reveals that the respondent firm filed an application under Section 20 of the Arbitration Act, 1940, for referring the dispute to an Arbitrator. That application was dismissed by observing thus:-

> *"5. Now after going through the facts and case laws referred thereto, I have given thoughtful consideration to the whole matter and of the considered opinion that matter has already and finally been settled between the parties and proof*

of this fact is, no demand certificate from the side of the plaintiff. Plaintiff has taken contradictory pleas in his notices. In one notice he has claimed 3220.94P. plus interest. In another notice, he has claimed Rs.7063.74p. including 3220.94p. But in the application in hand, he has claimed both these amounts independently. Clause 'E' and main clause 11 of agreement between the parties regarding security deposit, it is clearly mentioned that the security deposit will be refunded to the contractor on due and satisfactory performance of the services and completion of all the obligations of the contractor under the terms of the contract and specimen of a no demand certificate, subject to such deductions from the security as may be necessary to clear the dues of the corporation.

6. In this contention of respondent is that they have released the security deposits. No dispute is left when the security deposits and all the dues of the plaintiff were cleared. In those circumstances, applicant issued no demand certificate, which is in the possession of respondents. So in these circumstances, I think that application of the applicant is not tenable. There is no prima facie case. So dispute as alleged by the plaintiff cannot be referred to the Arbitrator."

Respondent went in appeal, which was allowed vide order dated 5.10.1983. Hence, this revision petition.

The appellate court below has reversed the judgment passed by the trial Court, by taking note of judgment of Hon'ble the Supreme Court in *Damodar Valley Corporation v. K.K.Kar, AIR 1974 Supreme Court 159,* wherein it was observed that even after submission of no demand certificate,

it will still be opened to the contractor, to get the matter referred for arbitration, as per terms and conditions of the contract agreement. Counsel for the petitioner has cited following judgments of Hon'ble the Supreme Court, to contend to the contrary:-

> *"1. M/s P.K.Ramaiah and company v. Chairman & Managing Director, National Thermal Power Corpn., 1994 Supp(3) Supreme Court Cases 126.*
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> *2. Nathani Steels Ltd. v. Associated Constructions, 1995 Supp (3) Supreme Court Cases 324.*
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> *3. Wazir Chand Mahajan and another v. The Union of India, AIR 1967Surpeme Court 990*
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> 4. *M/s Central Coal Fields Limited v. M/s Mining Construction and Multi Contract (P) Limited, (1982) 1 Supreme Court Cases 415."*

A reading of the judgment in *M/s P.K.Ramaiah and company's case (supra),* clearly indicates that the Hon'ble Supreme Court, after noticing ratio of the judgments in *Damodar Valley Corporation's case (supra),* has opined that once the contractor has acknowledged in writing, the correctness of measurement etc., it will not be opened to him to get the matter referred to the Arbitrator. The Hon'ble Supreme Court has observed thus:-

> "*Admittedly the full and final satisfaction was acknowledged by a receipt in writing and the amount was received unconditionally. Thus there is accord and satisfaction by final settlement of the claims. The subsequent allegation of coercion is an afterthought and a devise to get over the*

settlement of the dispute, acceptance of the payment and receipt voluntarily given."

The same is the ratio of the judgments in other cases of the Hon'ble Supreme Court, as referred to above.

It is not in dispute that in the present case, the contractor has issued a no demand certificate, wherein he has stated that the security amount be refunded to him after making necessary adjustments, if need be. It is an admitted fact that accordingly, security amount was also released by the petitioner Corporation. If that is so, this Court feels that no dispute remains to be decided by the Arbitrator.

In view of facts mentioned above, this revision petition is allowed and the order passed by the appellate Court below is set aside and that of the trial Court is upheld.

November 22, 2006 **(Jasbir Singh)**
gk **Judge**